IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

OP.No. 10343 of 2000(F)

PETITIONER:

CHANDRAN, S/O.NARAYANAN,
VATTAMPADAM, MELARCODE VILLAGE,
ALATHUR TALUK, PALGHAT DISTRICT.

BY ADVS. SRI.S.V.BALAKRISHNA IYER
& SRI.P.B.KRISHNAN

RESPONDENTS:

1. THE DISTRICT COLLECTOR,
PALAKKAD.

2. THE SUB COLLECTOR, PALAKKAD.

3. THE TAHSILDAR, CHITTUR.

4. THE VILLAGE OFFICER,
MELARCODE.

BY GOVERNMENT PLEADER SMT.N.SUDHADEVI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NOS.17243/00 & 20362/01
IN O.P.NO.10343/00-F

DISMISSED.

Sd/-
(V.GIRI)
01.08.2007. JUDGE

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER REF.NO.D3.L.C.109/97 ISSUED BY RESPONDENT NO.3 DATED 7.10.1997.

EXT.P2: TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 22.10.1997.

EXT.P3: TRUE COPY OF THE ORDER NO.9312/97 PASSED BY THE 2ND RESPONDENT DATED 17.1.1998.

EXT.P4: TRUE COPY OF THE MEMORANDUM OF REVISION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 18.2.1998.

EXT.P5: TRUE COPY OF THE ORDER NO.G4-11252/98 PASSED BY THE 1ST RESPONDENT DATED 7.7.1999.

EXT.P6: TRUE COPY OF THE NOTICE ISSUED BY RESPONDENT NO.3 TO THE PETITIONER DATED NIL.

RESPONDENTS' EXHIBITS: NIL

//true copy//

P.S. To Judge

SK/-

V.GIRI, J.

O.P.No.10343 of 2000 F

Dated this the 1st day of August, 2007.

JUDGMENT

The petitioner challenges Ext.P5 order and Ext.P6 notice. Ext.P5 is an order passed by the District Collector exercising revisional powers under the Land Conservancy Act [for short "**the Act**"] in relation to orders passed by the Tahsildar vide Ext.P1, as affirmed in Ext.P3 order passed by the Revenue Divisional Officer. Ext.P6 is a notice issued by the Tahsildar under Section 7 of the Revenue Recovery Act, seeking recovery of an amount of Rs.90,000/-, which apparently, is in consequence of the dismissal of the revision vide Ext.P5 order.

2. The petitioner was served with a notice under Section 12 of the Act alleging that he had unauthorisedly cut and removed an Avil Tree from a Puzhapuramboke in Survey No.400 B No.56 of Pothundy Village of Chittur Taluk. The petitioner appeared before the Tahsildar, and it is alleged in Ext.P1 order, which contention is reiterated in the counter affidavit filed on behalf of respondents 1 to 4, that he admitted his guilt as regards the cutting and removal of the tree as such. There is a dispute as to the veracity of the stand taken in this regard by the respondents.

3. The Tahsildar proceeded to pass Ext.P1 order holding that the petitioner had appeared for hearing on 19.9.1997 and has admitted the offence of cutting and removal of the trees, that the allegation in the instant case is real and is objectionable and therefore, the petitioner is liable for the damages fixed at Rs.90,000/-, which the petitioner is required to pay. Ext.P2 appeal was preferred before the Revenue Divisional Officer, inter alia, contending that the appellant was forced to put signature in a blank paper before the Nenmara Police Station in connection with another incident involving the Village Officer which had occurred earlier and that the petitioner had not admitted the offences recorded in Ext.P1 order.

4. Petitioner challenged Ext.P1 order in a Statutory Appeal before the Revenue Divisional Officer. The same was rejected by a cryptic order, Ext.P3.

5. The petitioner challenged Ext.P3 before the District Collector vide Ext.P4 revision which was rejected as aforementioned in Ext.P5. In Ext.P5, the District Collector seems to have found that on reviewing the connected files and the arguments of the counsel, it is clear that a valuable tree has been

cut and removed. The other contentions did not merit consideration by the District Collector.

6. The petitioner challenges Exts.P5 and P6. Since Ext.P5 is an order affirming the orders, Exts.P1 and P3, it might be necessary to consider the correctness of the orders Exts.P1, P3 and P5 as such.

7. Learned counsel for the petitioner contends that Ext.P1 is the result of a proceedings which has to be termed as quasi judicial in character. The Tahsildar is to adjudicate, inter alia, the question as to whether the tree has been cut and removed from a Government property and if so, the value of the tree that was cut. The estimation of the value thereof enables the concerned officer to determine the damages which could be levied from the offender. Section 10 also contemplates a possible prosecution for an offence involving the destruction or appropriation of any useful property belonging to the Government. This apparently, according to the learned counsel, is an indication of the nature of the offence, coming under the first limb of Section 10 of the Act.

8. It is next contended that Ext.P1 order has been passed solely on the basis of the alleged admission of guilt by the

petitioner. According to the learned counsel, this has been squarely denied by him in the grounds of appeal in Ext.P2. Such a contention has not been considered by the Sub Collector. It is further contended by the learned counsel that Ext.P3 order has been passed by the Sub Collector without affording an opportunity of being heard to the petitioner. The absence of adherence to the principles of natural justice is more significant in circumstances where Ext.P1 order was passed on the basis of an admission of guilt by the offender and the said finding is challenged in Ext.P2 appeal, contended the learned counsel. It is further contended by him, referring to the decision of this court in **Sasidharan v. District Collector {1974 K.L.T. S.N. Page 27 Case No.76}** that the Tahsildar, adjudging a dispute as to whether the defendants in the Land Conservancy case have cut down the trees and if so, what is the damages that should be realised from them, based on the value of the trees cut as indicated in the wording of Section 10 of the Act, exercises a quasi judicial power. According to him, the materials, on the basis of which Ext.P1 order was passed, were not supplied to him. There is no admission of the commission of the offence as such and therefore, it was necessary for the Tahsildar to

supply the materials on the basis of which an adjudication under section 10 is undertaken, learned counsel submits.

9. A counter affidavit has been filed on behalf of respondents 1 to 4 wherein they contend that the petitioner has actually appeared before the Tahsildar and has admitted that a big avil tree standing in puramboke comprised in Sy.No.400 of Block 56 of Pothundy Village of Chittur Taluk was cut down into 22 pieces of various sizes and stocked in the puramboke river side. The same were seized by the Village Officer, Pothundy. The value of the tree was estimated at Rs.30,000/-. On enquiry, it was revealed that one Chandran, S/o.Narayanan, Vattampadom, Melarkode Village of Alathur Taluk has unauthorisedly cut away and stocked the same. It is further submitted that he has also signed the mahazar prepared by the Village Officer in the presence of the witnesses agreeing that he has cut the trees. In that circumstance, a notice under Section 12 of the Act was issued to him. The orders under challenge was sought to be supported in the counter affidavit.

10. In the nature of the order, which I propose to pass, I do not propose to go into the question whether the petitioner has

actually cut and removed the trees and has unauthorisedly stacked it in the puzhapuramboke for removal thereafter. A perusal of Ext.P1 order passed by the Tahsidlar shows that apparently the Tahsildar has come to the conclusion that it is the petitioner who has unauthorisedly cut the tree and stacked it in the puramboke on the basis of the alleged admission made by the petitioner. The petitioner has squarely challenged the same at the earliest possible opportunity, in Ext.P2 appeal before the Revenue Divisional Officer. Where the nature of the proceedings under Section 10 of the Act have been held to be quasi criminal in character, as the Bench decision of this Court in **State of Kerala v. Sreedharan Nair {1998(1) KLT 524}** holds, it is necessary for the original authority to adjudge the question as to whether a tree has been unauthorisedly cut and removed. No doubt, if there is an admission, it may not be necessary to conduct a detailed enquiry, but where the alleged admission is repudiated before the statutory appellate authority, it is obviously necessary for the appellate authority to consider whether the challenge against the admission is bona fide, justified or otherwise misconceived. This does not seem to have been done in Ext.P3 by the Revenue Divisional

Officer. Significantly, this contention has been reiterated by the petitioner in Ext.P4 memorandum of revision before the District Collector as well. The same has not merited consideration by the District Collector.

11. In the circumstances, I find that the proceedings undertaken by the Tahsildar at the first instance under Section 10 of the Act has not been held in accordance with Section 10 of the Act or the law laid down by this court in **State of Kerala v. Sreedharan Nair {1998(1) KLT 524}** or **Sasidharan v. District Collector {1974 K.L.T. S.N. Page 27 Case No.76}.** The materials, on the basis of which the offence under Section 10 of the Act could be found out, have not been supplied to the petitioner. Further, there is nothing on record to show that there has been any enquiry conducted either by the appellate authority or by the revisional authority.

In the circumstances, this writ petition is allowed. Ext.P5 order is set aside. Though Exts.P1 and P3 have not been independently challenged in the writ petition, in the circumstances of the case, I direct the original authority to exercise the power under Section 10 of the Act de novo. I set aside Exts.P1 and P3 as

well. The Tahsildar, Chittur, 3rd respondent will issue a fresh notice to the petitioner detailing the allegations which are material under Section 10 of the Act. The materials collected by the Tahsildar in any enquiry conducted by him may be supplied to the petitioner. The petitioner will be granted an opportunity to raise his objections. Such objections will be considered in accordance with law and a fresh order will be passed, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment. The amount which the petitioner has deposited pursuant to the interim order passed by this court will be retained, subject to further orders to be passed pursuant to the directions contained in this judgment. In the circumstances of the case, there will be no order as to costs.

Sd/-

(V.GIRI)

JUDGE

sk/

//true copy//

V.GIRI, J.

O.P.No.10343 of 2000

JUDGMENT

1st August, 2007.